

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 19941
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On December 5, 2006, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional income tax and interest for the taxable years 2003 through 2005 in the total amount of \$7,531.

On January 10, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather asked that the subject be finalized based upon the documentation provided. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his Idaho individual income tax returns for the taxable years 2003 through 2005. On each of his returns, the taxpayer reported a subtraction of income on form [Redacted] for income earned [Redacted]. The income subtracted was the wages the taxpayer earned while working for [Redacted]. The Income Tax Audit Bureau (Bureau) selected the taxpayer's 2003 through 2005 returns to verify that the subtracted income qualified as income earned [Redacted] on whose [Redacted] income was earned.

The Bureau contacted the taxpayer and asked for a copy of his [Redacted] card and the physical location of where the taxpayer performed his duties for [Redacted]. The taxpayer complied with the Bureau's request and stated that the [Redacted] where he worked was located [Redacted].

The Bureau disagreed with the taxpayer's contention that [Redacted] was [Redacted]. The Bureau adjusted the taxpayer's returns stating the income did not qualify as income earned by [Redacted]. The reason was that the [Redacted]. The Bureau's explanation further stated that [Redacted] informed the Bureau that it had no employees who worked [Redacted].

The taxpayer protested the Bureau's determination. He stated he was an [Redacted]. He also provided copies of maps showing the [Redacted] which clearly shows [Redacted] is within the [Redacted].

The Bureau referred the matter for administrative review, and the Tax Commission sent the taxpayer a letter discussing the methods available for redetermining a Notice of Deficiency Determination. The taxpayer responded with another [Redacted], copies of Idaho Code section 67-5103, excerpts from two unknown sources, copies of the correspondence between the Bureau and the taxpayer, and a letter citing sections of the Uniform Commercial Code and Idaho Titles 39 and 40 stating that he acted in good faith following the guidelines provided by the Tax Commission. The taxpayer stated this was his final protest and would like the subject finalized on the documentation provided.

As part of his protest, the taxpayer cited the Uniform Commercial Code stating he refused to be compelled to perform under any contract or agreement he did not enter into knowingly, willingly, or intentionally, and furthermore he rejects any liability he may have incurred because of any compelled benefit he may have received. Idaho Code section 28-1-102 sets out the purpose of the Uniform Commercial Code. It states in pertinent part:

**Purposes - Rules of construction - Variation by Agreement.- (1)**

This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

- (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
- (c) to make uniform the law among the various jurisdictions. (Emphasis added.)

The Uniform Commercial Code applies only to commercial transactions; it has no bearing on a determination of tax matters. Therefore, any argument the taxpayer puts forth citing sections of the Uniform Commercial Code are without merit.

The taxpayer cited Titles 39 and 40 stating he in good faith used the guidelines the Idaho State Tax Commission provided for [Redacted] filing Idaho income taxes. The Tax Commission assumes the taxpayer meant to say Form 39 and Form 40 since Title 39 of the Idaho Code is Health and Safety and Title 40 of the Idaho Code is Highways and Bridges. Form 40 is the Idaho resident income tax form and Form 39 has the additions and subtractions from federal adjusted gross income. The taxpayer did use the proper forms for reporting his Idaho tax; however, the issue is whether his income qualified as income earned [Redacted] when he lived and worked [Redacted].

The taxpayer's argument centers on the fact that his place of employment, [Redacted], is located [Redacted] as it was originally determined by the [Redacted]. The [Redacted] acres of which [Redacted]'s location was a part. That reservation was reduced to its present day size of about [Redacted] through the [Redacted] lands to the United States government. Therefore, [Redacted].

Since the taxpayer's employment was not [Redacted], the taxpayer's income does not qualify as income earned [Redacted] and is therefore not exempt from Idaho income tax. The Bureau's adjustment could be upheld on this fact alone; however, there is another factor that makes the taxpayer's income wholly taxable by Idaho. The taxpayer is not [Redacted].

In Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 100 S.Ct. 2069 (1980), the United States Supreme Court stated,

Federal statutes, even given the broadest reading to which they are reasonably susceptible, cannot be said to pre-empt [a State's] power to impose its taxes on Indians not members of the Tribe. We do not so read the Major Crimes Act, 18 U.S.C. § 1153, which at most provides for federal-court jurisdiction over crimes committed by Indians on another Tribe's reservation. Cf. *United States v. Antelope*, 430 U.S. 641, 646-647, n. 7, 97 S.Ct. 1395, 1398-1399, 51 L.Ed.2d 701 (1977). Similarly, the mere fact that nonmembers resident on the reservation come within the definition of "Indian" for purposes of the Indian Reorganization Act of 1934, 48 Stat. 988, 25 U.S.C. § 479, does not demonstrate a congressional intent to exempt such Indians from state taxation.

Nor would the imposition of [a State's] tax on these purchasers contravene the principle of tribal self-government, for the simple reason that nonmembers are not constituents of the governing Tribe. For most practical purposes those Indians stand on the same footing as non-Indians resident on the reservation. There is no evidence that nonmembers have a say in tribal affairs or significantly share in tribal disbursements. We find, therefore, that the State's interest in taxing these purchasers outweighs any tribal interest that may exist in preventing the State from imposing its taxes.

Therefore, since the taxpayer is a [Redacted].

WHEREFORE, the Notice of Deficiency Determination dated December 5, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$2,048	\$ 441	\$2,489
2004	2,358	366	2,724
2005	2,386	227	<u>2,613</u>
		TOTAL DUE	<u>\$7,826</u>

Interest is computed to October 1, 2007.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2007, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.